

## V. SECTION-BY-SECTION ANALYSIS

### SHORT TITLE

The opening section provides that the Act is to be known as the "Federal Retirement Reform Act of 1985".

### SECTION 2. PURPOSES

This section indicates purposes of the legislation, which sets forth a new program of retirement, thrift-savings, survivors and disability benefits for those federal civilian employees who are covered under social security. These purposes include providing employees with financial security through a retirement program that compares favorably with those found in the private sector, encouraging all employees to set aside funds for retirement, and giving employees more options as to career mobility and financial planning for retirement.

### TITLE I - FEDERAL RETIREMENT SYSTEM ESTABLISHMENT

Title I establishes a new program of retirement and other benefits for most federal civilian employees who are covered by social security. Because social security covers all employees newly hired on or after January 1, 1984, this new program will gradually supersede the existing Civil Service Retirement System (CSRS).

Section 101(a).

This section adds a new Chapter 84 to Title 5, United States Code, after Chapter 83--Retirement, which continues to set forth the current Civil Service Retirement System. Chapter 84, entitled "Federal Retirement System", is subdivided as follows:

Subchapter I----Definitions; Federal Retirement System;

Subchapter II----Basic Plan;

Subchapter III---Thrift Savings Plan;

Subchapter IV----Survivor Benefits;

Subchapter V-----Disability Benefits;

Subchapter VI----General and Administrative Provisions;

Subchapter VII---Transition Provisions;

Subchapter VIII--Federal Retirement Thrift Investment  
Management System.

SUBCHAPTER I - DEFINITIONS; FEDERAL RETIREMENT SYSTEM

This subchapter sets forth basic definitions used in this chapter, many of them identical or similar to those used in Chapter 83.

Section 8401. Definitions

Paragraph (1) defines a participant's or annuitant's "account" to mean the record of thrift plan funds held on that person's behalf.

Paragraph (2) defines "annuitant" to mean a former employee who has applied to receive an annuity under this

chapter that he or she is entitled to receive.

Paragraph (3) defines "average pay" to mean the employee's highest average rate of basic annual pay, computed over 5 consecutive years, or over the period of total credited service if less than 5 years.

Paragraph (4) defines "basic pay" to mean a participant's basic rate of legally scheduled pay, subject only to the limits in sections 5308 and 5382(b) relating to statutory pay limits on General Schedule pay (Executive Level V) and Senior Executive Service pay (Executive Level IV) but not more than the rate for Level I of the Executive Schedule. This new definition of basic pay ensures that employee retirement benefits will not be restrained by appropriation limitations on the amount of pay that will be payable when the legal rate of pay is higher.

Paragraph (5) defines "Board" to mean the Federal Retirement Thrift Investment Board established under section 8491(a).

Paragraph (6) defines "Civil Service Retirement and Disability Fund" to mean the existing fund established under section 8348.

Paragraph (7) defines "court" to mean a federal, state or Indian court, or a court of the District of Columbia, Puerto Rico or a U.S. territory or possession, having jurisdiction.

Paragraph (8) defines "Director" to mean the Director of the Office of Personnel Management (OPM).

Paragraph (9) defines "dynamic assumptions" to mean economic assumptions that reflect long-term future increases in wages and prices and are used in determining actuarial costs for a retirement system.

Paragraph (10) defines "earnings" of the Thrift Savings Fund to mean the investment yield received or the gain realized.

Paragraph (11) defines "eligible former spouse" to mean someone who was married to a participant or former participant for at least 9 months.

Paragraph (12) defines "employee" to mean--

(A) an individual described in subparagraph (A), (E), (F), (H), (I), or (J) of section 8331(1), relating to employees of a federal Department or agency, United States Commissioners, employees of a county committee established under section 590h(b) of title 16, employees of Gallaudet College, staff members of a former President, certain aliens employed by foreign governments and serving the interests of the U.S., and employees of the U.S. Park Police and the U.S. Secret Service; and

(B) a Congressional employee as defined in section 2107, including a temporary Congressional employee; provided that the individual had some period of federal service covered under social security after 1983, excluding (1) persons designated by certain clauses of section 8331, relating to federal justices or judges, employees covered

by another federal retirement system, certain temporary employees of the courts, certain employees of the Tennessee Valley Authority, certain student-employees and teachers employed during summer recess periods; (2) any individual excluded under section 8402(b)(2), relating to temporary or intermittent employees, (3) any individual covered by the Civil Service Retirement System on December 31, 1983 who has not had a break in service of more than one year after that date and who has not transferred into the new plan.

This definition no longer includes employees of the District of Columbia.

Paragraph (13) defines "Employee Advisory Committee" to mean the Committee appointed under section 8493 of this title.

Paragraph (14) defines "Executive Director" to mean the individual appointed under section 8494(a)(1).

Paragraph (15) defines "firefighter" to mean an employee with rigorous firefighting duties that require young and vigorous individuals, as determined by OPM after considering the recommendation of the employing agency, and an employee who is transferred directly to a supervisory or administrative position after performing 10 years of actual firefighting duty. This is a more restrictive definition than under present law. The Committee expects that OPM will review every position that an agency requests to be treated as a firefighter position and only authorize the usage of this definition where an employee in that position will actually

and directly participate in firefighting activities. The Committee added the caveat of supervisory and administrative positions to encourage upward mobility in career employment. However, to qualify for the definition, such employees in supervisory or administrative positions must have at least 10 years of actual firefighting duties.

Paragraph (16) defines "Fund" to mean the Civil Service Retirement and Disability Fund.

Paragraph (17) defines "Government" to mean the federal government and Gallaudet College.

Paragraph (18) defines "law enforcement officer" to mean an employee with rigorous law enforcement duties that require young and vigorous individuals, as determined by OPM after considering the recommendation of the employing agency, and an employee who is transferred directly to a supervisory or an administrative position after performing 10 years of actual law enforcement duty. This is a more restrictive definition than under present law. The limitations in the usage of this definition are similar to those for the firefighter definition. The Committee expects far fewer positions to be defined as law enforcement positions than under current law. Frequent contact with criminals is an insufficient reason for a position to be defined as a law enforcement position.

Paragraph (19) defines "loss" with respect to the Thrift Savings Fund to mean loss experienced from the investment of sums in the Fund.

Paragraph (20) defines "lump-sum credit" to mean the same as in section 8331(8).

Paragraph (21) defines "Member" to mean a member of Congress, except a Member who was serving in Congress on December 31, 1983 who has not transferred into the new plan.

Paragraph (22) defines "military reserve technician" to mean a military reserve member who is assigned to a civilian technical position which may be filled only by a military reserve member serving in a specified military grade. This definition includes national guard technicians.

Paragraph (23) defines "net earnings" of the Thrift Savings Fund to mean the excess of earnings over losses.

Paragraph (24) defines "net losses" of the Thrift Savings Fund to mean the excess of losses over earnings.

Paragraph (25) defines "normal cost" to mean the entry-age normal cost of retirement and related benefits, computed by OPM as a level percentage of basic payroll using generally accepted actuarial practices and standards including dynamic assumptions, i.e., assumptions that anticipate inflation in wages and prices. The normal cost as computed under this definition shall be used to value the cost of the retirement plan for all other administrative purposes.

Paragraph (26) defines "Office" to mean the Office of Personnel Management.

Paragraph (27) defines "participant" to mean an employee, a Member or a person receiving disability benefits under this chapter.

Paragraph (28) defines "price index" to mean the same version of the Consumer Price Index that is used under Chapter 83.

Subsection (29) defines "service" of a participant or former participant to mean--

(A) employment as a participant after December 31, 1986;

(B) employment subject to the interim plan;

(C) military service, as provided in section 8332(c) subject to section 8419(a);

(D) employment as a participant in the old plan, to the extent provided by section 8472(a); and

(E) leave without pay as treated under the current system.

Service is computed as full years and twelfth parts thereof, excluding fractions of months.

Paragraph (30) defines "supplemental liability" to mean the actuarial value of future benefits that is not covered by normal cost contributions under section 8418(a) or by assets of the Fund. Contributions made by agencies under the interim arrangement to CSRS will be credited to the FRS for the purpose of determining this liability. In addition, the Office will credit any excess unfunded liability payments made by the Postal Service for employees who transfer from CSRS to the new plan.

Paragraph (31) defines "System" to mean the Federal Retirement System described in section 8402.



Section 8402. Federal Retirement System; participation

Subsection (a) states that the provisions of Chapter 84 constitute the Federal Retirement System (FRS).

Subsection (b) states that all employees and Members are participants in the FRS except temporary or intermittent employees who are excluded by OPM, the Architect of the Capitol or the Librarian of Congress.

Section 8403. Relationship to the Social Security Act

This section states that all benefits payable under the system are in addition to social security benefits, except as otherwise provided.

## SUBCHAPTER II - BASIC PLAN

Subchapter II describes the basic annuity plan, which is a defined-benefit plan covering all permanent employees who were hired or rehired after December 31, 1983 and Members of Congress who began service after such date and were subject to social security on or after January 1, 1984, and any employees or Members subject to the CSRS who elect to transfer to the new plan.

### Section 8411. Entitlement to immediate retirement

This section sets forth the various age and service requirements for an employee's or Member's entitlement to immediate retirement benefits, computed under section 8413 through 8415.

Subsection (a) provides for immediate retirement benefits at age 55 with 10 years of service.

Subsection (b) provides for immediate retirement benefits at age 62 with five years of service.

Subsection (c) provides for immediate retirement benefits at age 50 for a law enforcement officer or firefighter who has served in one or both occupations for 20 years, or at any age after serving for 25 years. The mandatory retirement ages under CSRS for these occupations are applicable in this plan.

Subsection (d) provides for immediate retirement benefits at age 50 for an air traffic controller who has served in such an occupation for 20 years, or at any age after serving for 25 years. The mandatory retirement age under CSRS for an air traffic controller is applicable in this plan.

Subsection (e) provides for immediate retirement benefits at age 50 for an employee with 20 years of service or at any age after 25 years of service, in the case of an employee, other than a law enforcement officer, firefighter or air traffic controller, who

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(A) is involuntarily separated except for cause and has not declined a reasonable offer of employment within two grades or pay levels which is within the employee's agency and commuting area, or

(B) is voluntarily separated while serving in a geographic area designated by OPM, from an agency undergoing a reduction in force or reorganization where a significant percentage of employees are downgraded or separated.

Subsection (f) specifies that annuities under this section are computed under section 8413, 8414 and 8415.

Subsection (g) provides that a former employee or Member entitled to workers' compensation benefits under subchapter I of chapter 81 is not entitled to an annuity while receiving such benefits.

Section 8412. Entitlement to deferred retirement

This section sets forth the various age and service requirements for an employee's or Member's entitlement to deferred retirement benefits, computed under sections 8413 through 8415.

Subsection (a) provides that a participant who leaves Government employment, while under age 55 and with 10 or more years of service, may elect deferred retirement benefits that begin at any age between 55 and 62, as the participant elects.

Subsection (b) provides that a participant who leaves Government employment, while under age 62 and with five years but less than 10 years of service, may elect deferred retirement benefits that begin at age 62.

Subsection (c) provides that an annuity authorized under this section is computed under sections 8413, 8414, and 8415.

Subsection (d) states that someone receiving benefits under the Federal Employees Compensation Act, chapter 81, is not entitled to an annuity from the basic plan while receiving such benefits.

Section 8413. Computation of annuity

This section provides the basic formula for computing the annuity a participant is entitled to receive. This formula does not reflect possible adjustments for reduced early retirement

benefits or election of a survivor annuity or for cost-of-living increases.

Subsection (a)(1) gives the basic annuity formula under both options -- .9 percent of the employee's average pay multiplied by the number of years service which does not exceed 15 years; 1.1 percent multiplied by the number of years of service more than 15 years, except as provided in subsection (a)(2).

Subsection (a)(2) provides the special annuity formula of one percent times the years of service for a law enforcement officer, firefighter, air traffic controller, or military reserve technician.

Subsection (a)(3) provides that unused sick leave is counted as additional service under this formula, to the same extent as provided in section 8339(m), if the employee retires entitled to an immediate annuity or dies leaving a survivor or survivors entitled to a survivor annuity. The unused sick leave is not counted toward the service needed to become entitled to an immediate or deferred annuity.

Subsection (b) provides for an annuity supplement to individuals retiring after at least 25 years service or at age 50 with 20 years of service as a law enforcement officer, firefighter or air traffic controller, payable from retirement until age 62. The intention is that the amount of the individual's benefits will not change appreciably when payment of this supplement stops at

the time the retired employee reaches age 62 and social security first becomes payable. The annuity supplement is the estimated social security amount, computed from the employee's covered earnings in one or more of the above occupations as if he or she were then 62 years old. The supplement should equal the amount of social security benefits that the employee is projected to receive at age 62 multiplied by the ratio of covered earnings attributable to such occupation over total covered earnings. This amount is increased each year by the percentage increase, if any, in the average wage index published by the Social Security Administration.

Subsection (c) provides that a year of part-time service will be treated proportionately as a fraction of a year in the annuity formula, with five-year average pay based on the full-time rate of pay. The Committee intended that an annuity computed under this section accurately reflect the amount of service of an annuitant. The Committee also believes that part-time work should be a viable option for workers reaching or nearing retirement. This provision does not contain the current financial penalties that exist under the CSRS for employees who change from full-time to part-time employment.

#### Section 8414. Reduction for early retirement

This section provides for reduction percentages that apply to annuities when employees retire early and elect to begin receiving benefits before the normal retirement age. It also

provides for exceptions to the early retirement reduction for certain annuitants.

Subsection (a)(1) provides that a 2-percent reduction factor applies for an annuitant who retires between ages 55 and 62 after 30 or more years of service other than a law enforcement officer, firefighter, air traffic controller, military reserve technician as specified in paragraph (3)(A) and in subsection (c) of this section), and an annuitant who elects to make contributions under section 8418(c). Benefits are reduced by 2 percent per year (one-sixth of one percent for each month) by which the benefit commencement date precedes age 62. This 2-percent reduction factor also applies to benefits for involuntary retirement under section 8411(e).

Subsection (a)(2) provides that a 5-percent reduction factor applies to voluntary early retirement benefits commencing before age 62 when the employee has less than 30 years of service. Benefits are reduced by 5 percent per year (five-twelfths of one percent for each month) by which the benefit commencement date precedes age 62.

Subsection (a)(3) provides that a 2-percent reduction factor applies to involuntary retirement benefits commencing before age 55 for a military reserve technician. Benefits are reduced by 2 percent per year (one-sixth of one percent for each month) by which the benefit commencement date precedes age 55).

Subsection (b) (1) provides that the annuity reductions in subsection (a) shall not apply to law enforcement officers, firefighters and air traffic controllers as provided in section 8411(c) and (d).

Subsection (b) (2) provides that subsection (a) shall not apply to an annuitant who elected to make contributions under section 8418(c), did not receive a refund of such contributions, is at least 55 years of age, and has completed 30 years of service.

Subsection (c) provides that subsection (a) (1) shall not apply to a participant who separates from government employment as a military reserve technician after becoming age 55 and completing 30 years of service.

#### Section 8415. Reduction for survivor annuities

Subsection (a) provides that an annuitant's annuity computed under section 8413 or 8414 shall be reduced by 10 percent for each survivor annuity which could be payable out of the Fund with respect to the annuitant. For example, if the annuitant has elected two survivor annuities for two potential survivors, the total reduction is 20 percent, and the annuity is paid at 88 percent of the unreduced amount.

Subsection (b) (1) provides that a reduction of an annuity for the purpose of providing a survivor annuity will be adjusted in the case of an annuitant who elected to make contributions under



section 8418(c) and has not received a refund, to reflect any change in circumstances relating to entitlement to a survivor annuity. Such a change includes the annuitant's marriage or remarriage after retirement, with the new spouse eligible for a survivor annuity elected under section 8434, or election of a survivor annuity for a former spouse under section 8436.

Subsection (b)(2) provides that an adjustment under paragraph (1) of this subsection may not be made in the case of an annuitant not described in such paragraph.

#### Section 8416. Methods of payment

The basic annuity, computed as described in section 8413 and reduced for early retirement as described in section 8414, is paid to the retired employee for life in a constant amount subject only to cost-of-living adjustments, unless benefit payments are elected under some other method. Certain other methods may be elected by the employee, with the consent of the employee's spouse or former spouse in some situations.

Subsection (a)(1) provides that OPM shall prescribe methods of payment of annuities.

Subsection (a)(2) provides that these methods will include but not be limited to monthly annuities payable (A) to the retired employee only for life, (B) to the retired employee for life and thereafter in an amount that is 50 percent of the annuity to the

retired employee's surviving spouse without regard to any survivor annuity reductions under section 8415 or election under 8417(a), and (C) to the retired employee for life and thereafter in an amount that is 50 percent of the annuity, computed without regard to an election under 8417(a), to a designated individual who has an insurable interest in the annuitant.

Subsection (b)(1) provides that employees or former employees must elect one of these alternative methods of payment when applying for an annuity. Subsection (b)(2) provides that a participant may select a method of payment other than the joint and survivor method in (a)(2)(B) only if both the employee or former employee and spouse sign an irrevocable written waiver of that method before that annuity commences.

Subsection (b)(3) provides that a joint and survivor annuity shall be paid as described in (a)(2)(B) in the case of an annuitant who fails to make an election under (b)(1).

Subsection (b)(4) provides that an employee may not designate another individual to be eligible for a survivor annuity under subsection (a)(2)(c) unless the employee is in good health, as determined by OPM.

#### Section 8417. Level benefits option

Subsection (a) provides for an employee who retires before age 62 with an immediate annuity to convert it to an optional annuity in

an amount that is higher up to age 62, and lower after age 62 as provided in subsection (b).

Subsection (b)(1) provides that the amounts payable under this level benefits option are computed so that at attainment of age 62 the total benefits including social security remain level, as nearly as is practical.

Subsection (b)(2) provides that the option is an actuarial equivalent, i.e., the value of all benefits payable under the option is equal to the value of the benefits payable if the option were not elected.

#### Section 8418. Contributions

Subsection (a) provides that each agency will contribute to the Fund the normal cost of benefits for that agency's employees, as determined by OPM using dynamic assumptions, including the cost of annuity supplements under section 8413(b). The normal cost computation paid by each agency will be reduced by the normal cost attributable to military service since the Department of Defense will pay for that under Section 8419. The contributions will be made from salary appropriations or certain other funds. For subsection (a) and (b), the Committee intends for OPM to credit the agencies for normal cost and supplemental liability payments from contributions paid during the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983, and

from any excess unfunded liability payments made by the Postal Service for pre-1984 employees who transfer to the new plan.

Subsection (b) (1) provides that each fiscal year OPM will compute the supplemental liabilities attributable to employees of the U.S. Postal Service and to non-Postal employees separately.

Subsection (b) (2) provides that these supplemental liabilities will be amortized in 30 annual installments.

Subsection (b) (3) provides that each year OPM will notify the Secretary of the Treasury and the Postmaster General of the amount of the annual installment payable by them to amortize the liability.

Subsection (b) (4) provides that the Secretary of the Treasury and the Postmaster General shall pay to the Fund the annual installment due as determined under subsection (b) (3) before the close of each fiscal year.

Subsection (b) (5) provides that OPM may require the Board of Actuaries of the Civil Service Retirement System to make actuarial valuations and determinations, make recommendations, and maintain records in the same manner as provided in section 8437(f), relating to data used in making periodic actuarial valuations of the CSRS. OPM may use the Board of Actuaries' valuations and determinations.

Subsection (c)(1) provides that a participant may elect to contribute to the Fund. An election, which is irrevocable, must be made within 60 days after the participant first becomes a participant.

Subsection (c)(2) provides that for an employee who elects to contribute to the Fund under (c)(1), the amount withheld from the basic pay is equal to the difference between 7 percent of basic pay and the amount of social security tax withheld for old age, survivor and disability insurance.

Subsection (c)(3) provides that the amounts withheld shall be deposited in the Treasury of the United States to the credit of the Fund.

Subsection (c)(4) provides that a participant who elects to contribute to the Fund shall agree to the deductions required in (2).

Subsection (c)(5) provides that section 8334(d) applies to refunds of amounts deducted as required by paragraph (2) of this subsection.

Subsection (c)(6) provides that a law enforcement officer, firefighter, air traffic controller, and military reserve technician may not make an election under paragraph (1).

Subsection (d) provides that under regulations prescribed by OPM, the head of an agency may request a reconsideration of the amount of the normal cost and supplemental liability computed by OPM under subsection (a) or (b). The Board of Actuaries of the Civil Service Retirement System shall review the computation and, if appropriate, recompute the amount. The determination of the Board of Actuaries shall be final. The Committee intends for the Board of Actuaries to serve in an appeal capacity in this regard.

Section 8419. Funding of annuity attributable to military service.

Subsection (a) provides that participants get credit for military service under this plan as provided in 8332(c), unless they have transferred from the CSRS as provided in 8471(a)(1)(A). No deposit is required from the employee. Employees who transfer from CSRS may receive credit under CSRS for military service by making a deposit as provided in 8334(j).

Subsection (b) provides that the Secretary of the Treasury is to reimburse the Fund from Department of Defense appropriations annually for the normal cost relating to military service of people who join this plan during such fiscal year.

Subsection (c) provides that OPM shall compute the amount required in (b) and notify the Secretary of the Treasury.

Section 8420. Lump-sum benefits; designation of beneficiary;  
order of precedence

Subsection (a) provides that a participant who has elected to make contributions to the Fund under section 8418(c) may be paid the portion of the lump-sum credit attributable to his or her contributions and interest. The participant must be separated from government employment for at least 31 consecutive days or be transferred to a position not subject to this subchapter. He or she must apply to OPM for the refund and may not receive it if reemployed in a position subject to this subchapter when the application is filed, or if eligible to receive an annuity within 31 days after filing.

Subsection (b) provides that a participant or former participant may designate a beneficiary or beneficiaries for purposes of this subchapter.

Subsection (c) provides that lump-sum benefits shall be paid to survivors of the participant who are alive when title to the payment arises. It provides that order of precedence for entitlement to payment shall be the same as provided in 8342(c).

Subsection (d) provides for payment of the lump-sum refund to be paid as provided in (c) if the participant or former participant dies without a survivor.

Subsection (e) provides that if annuity rights of a deceased participant and any survivors terminate before the total annuity payments equal the total lump-sum credit, the difference shall be paid as prescribed in subsection (c).

Subsection (f) provides that if an annuitant dies, the accrued and unpaid annuity shall be paid as provided in subsection (c).

Subsection (g) provides that accrued and unpaid annuity on the termination of the annuity or survivor annuity shall be paid to the individual. On the death of a survivor annuitant, accrued and unpaid annuity will be paid in the same order of precedence as in section 8342(g).

Subsection (h) provides that payment of the lump-sum credit may be made only after notification to current and former spouses and subject to court orders regarding former spouses.

Subsection (i) provides that interest on the lump-sum credit shall be compounded annually at the rate computed under section 8334(e)(3).

Subsection (j) provides that payment of the lump-sum credit voids all rights under this chapter which result from the election to make contributions under 8418(c).



## SUBCHAPTER III - THRIFT SAVINGS PLAN

This plan is financed by employee contributions and by matching employer contributions. The plan is patterned after those found among large employers in private industry. It includes many features that have proved popular among employees and have achieved excellent investment results at low cost. It is modified as necessary to accommodate a public employee benefit program that must also have broad acceptance among the general public.

Section 8421. Contributions

Subsection (a)(1) provides that at the point an employee chooses to contribute to the Fund under Section 8418(c) or within 60 days of commencement of employment, may contribute up to 10 percent of pay to the thrift plan in any year.

Subsection (a)(2) provides employees receiving disability benefits under the new plan may contribute up to 10 percent of such benefits in any year they receive such benefits.

Subsection (a)(3) permits employees to contribute unused portions of prior year allowable contributions to the thrift plan up to a total employee contribution of 15% in any one year. Unused amounts from prior years are not matched.

Subsection (a)(4) provides that contributions will be made under a regular program regulated by the Executive Director.

Subsection (a)(5) provides that employees will be given

the opportunity to change their level of contributions at least once a year, as regulated by the Executive Director. The Committee intends that the contributions will normally be a flat percentage of pay, but other arrangements may be allowed as administratively feasible, for example contributions that are coordinated with the social security payroll tax, which stops when the employee's pay during the year reaches the maximum amount taxable, \$39,600 in 1985.

Subsection (b)(1) provides that the employee's agency will make contributions to the fund for the benefit of the employee or disabled participant at the end of each pay period.

Subsection (b)(2) provides that the agency's contribution will match contributions up to 5% of employee pay at a dollar-for-dollar rate, except that for employees who also have elected to make a contribution under Section 8418(c), the agencies will match contributions up to 1% of employee pay at a rate of a dollar for dollar, percents two and three at a rate of 50¢ on a dollar and percents four, five and six at a rate of 25¢ on a dollar.

Subsection (c) provides that the matching agency contributions are derived from salary appropriations or from certain other funds.

Subsection (d)(1) provides that the amounts of pay contributed by employees, and the matching employer contributions, are not included in the employee's current gross income for

federal income tax purposes. These amounts, and investment return on such amounts, will instead be treated for tax purposes as described in Section 401(a) of the Internal Revenue Code, relating to tax-qualified pension and profit-sharing plans.

Subsection (d)(2) provides that this tax treatment will not apply in any taxable year with respect to which section (402)(a)(8) of the tax code does not apply to contributions made to any qualified cash or deferred arrangement within the meaning of section 401(k) of the tax code. Thus, if the waiver of the constructive receipt doctrine embodied in Section 402(a)(8) with regard to salary reduction plans is changed or eliminated, such a change will be applicable to the tax treatment of this plan. The Committee strongly believes that federal employees should be treated similarly to employees in private industry for this purpose.

Subsection (e) provides that these amounts of pay are included in wages, for purposes of payroll taxes under the Federal Insurance Contributions Act and crediting under the social security benefit procedures, to the same extent as cash compensation to the employee.

#### Section 8422. Vesting

Subsection (a) provides that a participant who leaves Government employment is entitled to his or her own contributions to the plan, and the vested portion of the employer matching contributions as indicated in subsection (b), plus

any gain, or minus any loss, from investment of the employee contributions and the vested portion of the employer match. The resulting amount is paid according to the employee's election under section 8423.

Subsection (b) provides a table indicating the percentage of employer matching contributions that is vested, based on the number of completed years of the employee's participation in the new plan--

<u>Number of completed years</u>	<u>Percentage</u>
Less than 1 year . . . . .	.0
1 but less than 2 years . . . . .	.20
2 but less than 3 years . . . . .	.40
3 but less than 3 years . . . . .	.60
4 but less than 5 years . . . . .	.80
5 or more years . . . . .	100

An employee who dies while in Government service is 100 percent vested. An individual making contributions during a period of disability gets credit toward vesting for the period in which he or she was contributing.

Subsection (c) provides for disposition of any amounts remaining in the account of a participant who is less than 100-percent vested and elects to receive payment under section 8423(c). In that event the remaining balance for the year in which the election is made is first used to pay administrative expenses of the Thrift Plan incurred during such year. Any part of this balance remaining after payment of administrative costs in any year reverts to the Treasury.

#### Section 8423. Entitlement and elections relating to entitlement

This section specifies the options a participant has to withdraw his or her funds from the plan upon leaving Government employment. The options available depend on the participant's retirement status under the basic pension plan set forth in Subchapter I.

Subsection (a)(1) states that a participant entitled to an immediate annuity under the basic plan, a benefit recipient under chapter 81 of this title, or a participant entitled to disability benefits from this plan has four options under the thrift plan:

- (A) an immediate annuity,
- (B) a deferred annuity,
- (C) withdrawal of the thrift plan funds in one or more payments, or
- (D) rollover of the funds to an individual retirement account (IRA) or to a qualified pension plan.

Subsection (a)(2) provides that a disabled participant may make an irrevocable election of one of these options only within one year of the disability date.

Subsection (b) states that a participant entitled to a deferred annuity under the basic plan has four options under the thrift plan:

- (1) a deferred annuity, commencing when the employee first could receive a deferred annuity under the basic plan,
- (2) a deferred annuity, commencing at a date after the employee first could receive a deferred annuity under the basic plan,
- (3) withdrawal of the thrift plan funds in one or more payments, commencing on or after the date the employee first could receive a deferred annuity under the basic plan, or

(4) rollover of the funds to an individual retirement account (IRA) or to a qualified pension plan upon separation from government employment.

Subsection (c) states that a participant not entitled to any annuity under the basic plan has two options under the thrift plan:

(1) withdrawal of the thrift plan funds in one or more payments, commencing at age 62, or

(2) rollover of the funds to an individual retirement account (IRA) or to a qualified pension plan upon separation from government employment.

Subsection (d) provides that a participant who has elected a deferred annuity from the thrift plan to commence at a date later than the earliest possible date, may modify the election and choose an earlier date.

Section 8424. Annuities; methods of payment; election; and computation

Subsection (a) provides that the Board which administers the thrift plan will prescribe methods of payment of annuities, which will include at least the following five monthly annuity methods:

(A) payable to the annuitant for life in a level monthly amount,

(B) payable to the annuitant and spouse while both are alive in a level monthly amount, and to the survivor for life in an appropriate amount,

- (C) payable as in method (A) but with annual increases,
- (D) payable as in method (B) but with annual increases,
- and
- (E) payable to the annuitant during the joint lifetime of the annuitant and a designated individual who has an insurable interest in the annuitant's life, and to the survivor for life.

Subsection (b) provides that an employee electing to receive an annuity from the thrift plan must elect one of the methods specified in subsection (a) before the date the annuity is to begin.

Subsection (c) provides that the amount of annuity available from the thrift plan will be determined by regulation on an actuarial basis.

#### Section 8425. Administrative provisions relating to payments and elections

The Executive Director will arrange for payout of thrift plan benefits and will issue regulations giving the procedures for electing to receive benefits. Such elections may not violate the terms of applicable court orders as to dissolution of marriage or property settlement.

#### Section 8426. Thrift Savings Fund

This section describes the way the Government will account for the thrift plan funds being held on behalf of the participants.



Subsection (a) establishes a Thrift Savings Fund in the Treasury of the United States.

Subsection (b) states that the Thrift Savings Fund contains all the contributions plus the net earnings or minus the net losses from investment of the contributions, reduced by payouts from the fund.

Subsection (c) makes the Thrift Savings Fund available for thrift plan purposes-- to invest, pay benefits, pay administrative expenses, make loans to participants, and purchase insurance as provided in section 8499.

Subsection (d) provides that except as otherwise provided by Federal law, sums in the Thrift Savings Fund may not be assigned and are not subject to legal process, except for amounts being paid to individuals who legally owe payments for child support, alimony or debts to the Government.

Subsection (e) states that the Board will establish a program of loans to a participant in the event of financial hardship, using the sums held in an employee's account derived from the employee's contributions and net investment earnings. The program will be subject to the same conditions prescribed by section 408(b)(1) of ERISA.

Subsection (f) states that the Thrift Savings Fund may be used only for the purposes specified in this section.

#### Section 8427. Investment of Thrift Savings Fund

This section specifies how the thrift plan funds are

invested, as designated by individual participants with respect to funds held on their behalf, subject to certain restrictions during the plan's first ten years. The investments are patterned after those which have proven successful in private plans in recent years, offering employees a carefully selected and limited choice of investments either within the government or in the private sector, and in either fixed income or equity (common stock) investments.

Because this is a Government plan, and so must have broad acceptance among the general public as well as employees, the private sector investment options are designed to minimize decision making by the Government that might not allow private investment markets to maintain their stability and objectivity.

The fixed income investments are intended to be highly secure debt instruments which guarantee a specified rate of return. The equity investments use a common stock index fund, which provides a broad cross-section of the stock market in a way that adjusts automatically for changing conditions and securities prices; index funds are widely used in private plans because of their simplicity, very low administrative costs and proven ability to provide good investment results.

By offering only a few alternative choices of investment funds, just as private plans do, this plan uses its size and mass purchasing power to make the funds available for

investment work harder and more effectively than is otherwise possible, and avoids turning the workplace into a marketplace where numerous promoters will contact employees to sell them investment products.

Subsection (a) defines terms relating to thrift plan investments:

(1) The "Common Stock Index Investment Fund" is one of the three optional investment funds established under this section, providing for common stock investments.

(2) The term "equity capital" is defined for use in specifying minimum size requirements for certain asset managers.

(3) The "Fixed Income Investment Fund" is another of the three optional investment funds established under this section, providing for fixed income investments in the private sector.

(4) The "Government Securities Investment Fund" is another of the three optional investment funds established under this section, providing for investment in government securities whose interest rates are tied to the average rate of long-term government securities.

(5) The term "net worth" is defined for use in specifying minimum size requirements for certain asset managers.

(6) The term "plan" means an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974 (ERISA).

(7) The term "qualified professional asset manager" is defined as in regulations of the Department of Labor

under ERISA, and includes an entity that can legally serve an employee benefit plan and that meets minimum size requirements, in any of four classes--

- (A) a bank,
- (B) a federally insured savings & loan association,
- (C) a state-licensed insurance company, or
- (D) a federally registered investment advisor.

(8) The term "shareholder's or partner's equity" is defined for use in specifying minimum size requirements for certain asset managers.

Subsection (b)(1) provides that the Board administering the plan will establish at least three alternative funds for investment of thrift plan funds--

Fund A, the Government Securities Investment Fund, invests in U.S. Government securities;

Fund B, the Fixed Income Investment Fund, invests in insured contracts, certificates of deposit or other securities which guarantee the return of principal plus a specified rate or rates of interest over a certain period of time;

Fund C, the Common Stock Index Investment Fund, invests in common stocks according to an index as specified in subsection (b)(2).

The Board may establish additional funds as appropriate.

Subsection (b)(2) describes the operation of the Common Stock Index Fund. First, the Board will define an index

representing a broad cross-section of the stock market. The index may consist of either: all of the stocks listed on one or more national exchanges and over-the-counter securities quoted publicly on an automated basis; or a commonly recognized index comprising common stock which has an aggregate market value which is as complete a representation of the U.S. equity markets as is reasonably practicable. Second, the Common Stock Investment Fund is simply invested in all of the stocks making up the index, with a percentage of the fund invested in a given stock equal to the percentage of the index represented by that stock as computed from the aggregate market values of the respective stocks or in a sampling of stocks designed to replicate the performance of the defined index. Third, the Executive Director may exclude certain stocks from the index based upon a recommendation from the Employee Advisory Committee on reasons other than the standards in section 8495.

Subsection (c) provides that the Executive Director shall invest monies in the Government Securities Fund that are not directed by employees into other funds. Thrift plan funds available for investment will go to the Government Securities Investment Fund when required by the limitations applying during the plan's first ten years, or when participants have not elected to use one of the other funds.

Subsection (d) outlines the procedures for participants to elect the funds in which their accounts will be invested. A participant is allowed to make such an election at least once a year, subject to the limitations in subsection (e), in accordance with regulations of the Executive Director. Participants may move all of their monies out of one fund to another during these periods with the exception of monies mandated to be in Government securities. The participant is given a specified period of time to make the annual election after being sent an annual statement of his or her account in accordance with subsection 8428(b). Finally, the participant must sign an acknowledgement when investing in funds other than the Government Securities Fund that the participant understands that the investment is made at the participant's risk and that returns on the other funds are not federally guaranteed.

Subsection (e) describes the limitations on thrift plan investments during the plan's first ten years, intended to avoid sudden administrative, financial or budgetary impacts. During these years a certain minimum percentage of the contributions to a participant's account must go to the Government Securities Investment Fund--

Minimum percentage of each  
participant's contributions that  
go into government securities

Calendar year	Employee contributions	Employer contributions
1987. . . . .	100. . . . .	100
1988. . . . .	80. . . . .	100
1989. . . . .	60. . . . .	100
1990. . . . .	40. . . . .	100
1991. . . . .	20. . . . .	100
1992. . . . .	0. . . . .	100
1993. . . . .	. . . . .	80
1994. . . . .	. . . . .	60
1995. . . . .	. . . . .	40
1996. . . . .	. . . . .	20

Contributions by or on behalf of a disabled participant are also subject to these limits. Amounts contributed during the transition period to the new plan (1984-86) and used to establish account balances at January 1, 1987, as provided by section 8473(b), must also go into the Government Securities Investment Fund. Amounts allocated to the Government Securities Investment Fund in accordance with these limits, or interest earned on such amounts must be reinvested in such fund even after the earlier securities mature.

Subsection (f) provides that the Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund. Maturities will be fixed with due regard for the needs of the fund. The average market rate shall be computed by the Secretary of the Treasury on the basis of market quotations as of the end of the month preceding the date of issue of all marketable interest-bearing obligations then forming a part of the public debt which are not due or callable for four years. Such average market yield shall be rounded to the nearest multiple of one-eighth of 1 percent. This arrangement ensures that the fund will receive higher yields associated with long-term bonds but not tie the fund down with bonds that cannot be bought or sold fairly frequently. Investing the money in special issues rather than marketable securities keeps the funds on budget.

#### Section 8428. Accounting

Subsection (a) provides that an account is maintained

for each participant of the funds held on his or her behalf. These funds are derived from contributions to the thrift plan by the employee and employer, and from transfers of funds on January 1, 1987 from the temporary plan in effect during 1984-86, reduced by amounts paid out as permitted by the plan. Each account is also credited with a proper share of the net investment earnings and losses, and is reduced by its share of the administrative expenses incurred under subchapter VIII. An employee's account will be increased or reduced by investment performance in the funds in which the employee participates, allocated by the proportion of the monies invested in a particular fund to the total monies of the account.

Subsection (b) provides that each participant gets an annual statement of his or her account.

Subsection (c) provides that the participants' accounts and the other books and records of the plan are audited annually by a qualified public accountant, with the accountant providing a written report and determination to the Board and the General Accounting Office regarding the audit using the same standards that apply to audits under ERISA.



#### SUBCHAPTER IV - SURVIVOR BENEFITS

The entire plan provides benefits to survivors of deceased employees and former employees from several sources:

- (1) social security pays monthly benefits to the surviving spouse and children of a deceased worker, as specified by existing law;
- (2) basic plan survivor benefits pay annuities to surviving spouses, former spouses or other designated individuals with an insurable interest, typically in the amount of 50 percent of the annuity payable during the lifetime of a retired worker, as provided in this subchapter; and,
- (3) thrift plan survivor benefits pay out the deceased worker's vested account balance under the payment method elected to the surviving spouse, former spouse, other designated individual with an insurable interest or estate, as provided in this subchapter.

Section 8431. Basic plan spousal benefits relating to the death of a participant or former participant other than an annuitant

Subsection (a) (1) provides for immediate payment of basic survivor benefits to the surviving spouse of a deceased employee who had at least 18 months of service.

Subsection (a) (2) states that the amount of the survivor annuity is 50 percent of the employee's reduced annuity, computed as if the employee had retired just prior to death on the basis of service to that point. The reduced annuity is the greater of: the deceased participant's earned annuity, computed in accordance with section 8413 and reduced for early retirement as provided in 8414, as appropriate, without regard to the 10 percent reduction for election of a survivor benefit; or 65 percent of the amount computed as provided in 8413 without applying the reductions for early retirement and election of a survivor benefit, except as provided in subsection (a) (3).

Subsection (a) (3) provides that the surviving spouse of a participant who elected to make contributions under section 8418(c) and did not receive a refund of these contributions receives 50 percent of the employee's annuity, without any reductions for early retirement or election of the survivor benefit and without regard to election of the level benefits option.

Subsection (b) (1) provides for immediate payment of basic survivor benefits to the surviving spouse of a deceased former employee eligible for a deferred annuity that had not yet commenced.

Subsection (b) (2) states that the amount of the survivor annuity is 50 percent of the former employee's annuity, computed as if the former employee had elected for the annuity to commence just

prior to death if he or she were then eligible to so elect, and otherwise as if the former employee were 55 years old just prior to death.

The annuity is based on the greater of the earned annuity, computed in accordance with section 8413 and reduced, as appropriate, as provided in 8414, without the reduction for election of a survivor benefit, or 65 percent of the amount computed without applying the reductions for early retirement or election of a survivor benefit and without regard to election of the level benefits option. If the former participant had elected to make contributions under section 8418(c) and had not received a refund of these contributions, the surviving spouse receives 50 percent of the annuity, without any reductions.

Subsection (c) provides that the survivor annuity of a participant or former participant who dies with less than 10 years of service will be computed using service of 10 years.

Section 8432. Basic plan spousal and insurable interest benefits relating to the death of an annuitant

This section provides for payment of basic survivor benefits after the death of an annuitant to the individual eligible to receive such benefits, in accordance with the election made by the annuitant either explicitly or implicitly under the four relevant provisions:

- (1) Section 8416 provides that an annuitant may elect one of the standard methods of payment when benefits commence.
- (2) Section 8416(b)(3) provides that a married employee who retires is automatically deemed to elect the 50-percent survivor annuity method unless both spouses reject that method in writing.
- (3) Section 8434(a) provides that an annuitant who marries or remarries after retiring may elect a survivor annuity under certain conditions.
- (4) Section 8436(c) provides that an annuitant whose former spouse loses some or all entitlement to a survivor annuity, because of the former spouse's death or remarriage, may make an election under certain conditions.

Section 8433. Survivor benefits under the thrift savings plan

Subsection (a) provides for payment of benefits to the survivor of a deceased annuitant who was receiving payments from the thrift plan. The survivor annuity is payable on an actuarial basis in accordance with regulations, based on the method of payment elected by the annuitant under section 8424(b), relating to elections that are allowed under the thrift plan when benefit payments commence, or under section 8434(a) or 8436(c), relating to elections that are allowed after benefit payments commence.

Subsection (b) provides for payment of benefits to the survivor of an employee or former employee who died before his or her basic annuity payments commenced, to the extent that the account balance was vested in accordance with section 8422. Payment is made to the surviving spouse in accordance with a method elected under subsection (c), except as provided in subsection (d) relating to former spouses. If there is no surviving spouse, payment may be made to a designated individual with an insurable interest, or to the estate if no individual has been properly designated.

Subsection (c) provides that a surviving spouse or another individual entitled to payments under subsection (b) may elect one of three possible methods:

- (1) payment of a monthly annuity for life,
- (2) transfer of the account balance to an individual retirement account (IRA), or
- (3) withdrawal of the account balance in one or more payments.

Subsection (d) gives first priority to payments under section 8435, relating to former spouses. Any amounts required for former spouses are deducted from payments to a later spouse under subsection (b) and held separately, until they are required to be paid to the former spouse or until they can be distributed to the later spouse when the former spouse's entitlement to survivor benefits is terminated by death or remarriage.

Section 8434. Basic and thrift savings plan survivor benefits relating to marriage after commencement of an annuity.

Subsection (a) allows an annuitant to make an irrevocable election of survivor benefits for a spouse of a marriage that occurs subsequent to the annuitant's retirement under the methods provided in the basic and thrift plans, provided election is made within two years after the marriage, subject to the conditions in subsections (b), (c) and (d).

Subsection (b) requires that the election take effect no earlier than nine months after the date of the marriage.

Subsection (c) provides that, within two years after electing a basic survivor benefit, the annuitant must deposit into the Fund the estimated amount by which his or her annuity payments to date would have been reduced if a basic survivor benefit method had been in effect, plus interest as provided in section 8438(a) relating to rates of interest on deposits.

Subsection (d) states that the election described in this section may not be made in the case of a remarriage, if the annuitant had been married earlier to the same spouse and both spouses had waived the right to survivor benefits under section 8416(b)(2).

Section 8435. Survivor benefits for eligible former spouses: entitlement; amount

This section provides for designation of a former spouse to receive survivor benefits from the basic and thrift plans.

Subsection (a) provides for payment of benefits to former spouses of deceased employees who were participants or former participants, if the benefits were expressly provided by an election under section 8436 or a court order or decree dissolving or annulling the marriage, and subject to subparagraphs (b) through (g).

Subsection (b) provides that the amount of basic survivor annuity to a former spouse may not exceed 50 percent of the basic annuity payable to the employee less the amount of basic survivor annuity payable to any other former spouses who have a higher priority based on the order of precedence set forth in subparagraph (d). The amounts are computed in accordance with sections 8416(a)(2)(B), 8431(a), and 8431(b) depending upon whether the deceased was an employee, annuitant or former employee with entitlements to a deferred benefit.

Subsection (c) provides that the employee may not allocate more than 100 percent of his or her account balance under the thrift plan to provide survivor annuities for former spouses, including anticipated interest on the account.

Subsection (d) provides that the limitations on amounts of benefits in subsections (b) or (c) are implemented on a first-

come, first-served basis by reference to the date of election or court order.

Subsection (e) provides that the survivor annuity to the former spouse may not begin before the election or court order is received by OPM or the participant dies, whichever is later, and it may not continue beyond the former spouse's remarriage before age 55 or death.

Subparagraph (f) provides that a court order or decree is not effective if it is inconsistent with a joint waiver of rights to survivor benefits executed earlier.

Subsection (g) provides that payment of benefits under this section to one person bars recovery by any other person for the same benefit.

Section 8436. Survivor benefits for former spouses: elections, deposits and collections, and administrative provisions

This section describes how the survivor benefits which annuitants may elect for former spouses under section 8435 are administered.

Subsection (a)(1) provides that an annuitant may elect that survivor benefits to a former spouse be paid in a specified amount. The election may be made on the date the annuitant applies for annuity or not later than two years after the date



the marriage to the former spouse was dissolved or annulled, whichever is later.

Subsection (a)(2) provides that if the annuitant elects a basic survivor benefit after retiring, then during the two-year period referred to in subsection (a)(1) the annuitant must deposit into the Fund the estimated amount by which his or her annuity payments to date would have been reduced if the election had been in effect, plus interest as provided in section 8438(a).

Subsection (a)(3) provides that such an election may not be fully effective in three situations--

- (A) It is not effective to the extent it conflicts with a court order or notice already filed with the plan;
- (B) In the case of a basic survivor benefit, it is not effective to the extent that the amount of survivor benefit exceeds the limitation in section 8435(b)(2), relating to the 50-percent annuity formula, or in the case of both basic and thrift plan benefits in section 8435(c) and (d), relating to multiple survivor annuities;
- (C) It is not effective if the annuitant is married when the election is made and does not get the current spouse's written consent.

Subsection (b) provides for an election by an annuitant who had elected survivor benefits to a former spouse or who has an eligible former spouse entitled to receive a survivor annuity when that former spouse's survivor-benefit entitlement terminates, due to his or her death or remarriage before age 55. This annuitant then may elect to provide or increase survivor benefits under the basic or the thrift plan for any other former spouse, during the two-year period following such termination, subject to the same conditions specified in subsection (c) for electing a survivor benefit for a current spouse, and subject to the consent of the current spouse if any.

Subsection (c) provides that when the entitlement of a former spouse to survivor benefits is terminated or reduced due to that spouse's death or remarriage, during the following two years the annuitant may elect to provide a survivor annuity to the current spouse from the basic plan or the thrift plan by filing the election with OPM or the Executive Director as the case may be.

Subsection (d) provides that when the entitlement of a spouse to survivor benefits is terminated by death, the annuitant may elect, within two years after the death to provide or increase an annuity for a former spouse.

Subsection (e) provides for OPM to authorize exceptions to the rule requiring consent of a married annuitant's spouse to waive election of a survivor annuity if the spouse's whereabouts cannot

reasonably be determined or obtaining the consent would be inappropriate due to exceptional circumstances.

Section 8437. Termination of entitlement

This section provides that the rights to a survivor annuity of an annuitant's current spouse terminate at the death of the spouse or at dissolution of their marriage.

Section 8438. Deposits to the Fund

This section indicates how to compute deposits to the Fund when basic survivor benefits are elected by an annuitant whose annuity has already commenced. Such elections and deposits are permitted under section 8434(c), relating to marriage or remarriage of an annuitant, and under section 8436(a)(2), relating to former spouses. In each case the deposit is the amount by which the annuity payments to date would have been reduced if the survivor annuity had been elected earlier, typically from the date the annuity commenced, plus interest equal to the overall average yield of the CSRS fund.

Subsection (a) provides that interest rates are computed for this purpose each calendar year in the same manner as for deposits to the CSRS relating to prior service for which no contributions were made or for which contributions were withdrawn or which was military service. For years after 1984, rates are computed from the overall average yield of the Fund.

Subsection (b) provides that when an annuitant does not make the deposit required for this purpose, OPM will collect the deposit by offsetting the annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and without getting the annuitant's consent to this offset.

Subsection (c) provides that OPM may extend the time limit specified for making the deposit for good cause shown.

## SUBCHAPTER V - DISABILITY BENEFITS

This subchapter establishes a separate long-term disability (LTD) insurance plan which is self-insured by the Federal government. Benefit payments and administrative services are to be provided by a third-party administrator. Only 18 months of service are needed to be eligible for benefits.

### Section 8441. Definitions

Paragraph (1) defines an "administrator of benefits" as OPM or an insurance company or other entity which OPM contracts with to provide claims payment services and related administrative services.

Paragraph (2) defines "disability benefits under the Social Security Act" as those payable under section 223 or 202 of the Social Security Act (relating to determinations of eligibility and amount of benefits).

Paragraph (3) defines "disability date" as the date an eligible participant became disabled.

Paragraph (4) defines "disabled" to mean that an eligible participant --

(A) meets the conditions established by section 223 of the Social Security Act (unable to work in substantial gainful activity) or

(B) is unable, because of disease or injury, to render useful and efficient service in his or her position and is not qualified for reassignment to a vacant position

in his or her employing agency, commuting area, and at the same grade or pay level, and in which he or she would be able to render useful and efficient service (occupationally disabled).

Paragraph (5) defines "eligible participant" as an employee or Member with service exceeding 18 months who --

(A) has applied for disability benefits under the Social Security Act and has been determined to be eligible within the meaning of title II of the Social Security Act (this includes someone not entitled to these benefits only because of insufficient quarters of coverage in which case the administrator of benefits will determine the disability) or

(B) meets the conditions set forth in paragraph (4)(B) of this section as determined by the administrator of benefits.

Paragraph (6) defines "final average pay" as the participant's annual rate of pay on his or her disability date, increased thereafter by the same overall average increase in General Schedule rates of pay.

Paragraph (7) defines "onset average pay" as the participant's average pay on his or her disability date, increased on January 1 of each year by the annual consumer price index increase minus two percentage points.

Paragraph (8) defines "projected service" as the sum of years of service before the disability date and the years after such date and before age 62, in the case of an individual

referred to in paragraph (5)(A), or age 55, in the case of an individual referred to in paragraph (5)(B).

#### Section 8442. Entitlement

Subsection (a) provides that an eligible participant is entitled to receive benefits under this subchapter while under 62, in the case of a person who meets the Social Security definition of disability (totally disabled) or while under 55, in the case of a person who meets the occupational disability definition. Benefits begin after accrued sick leave has been used and continue through the end of the month during which he or she reaches 62 or 55 as the case may be. On the first day of the month after the participant reaches the maximum age prescribed above, the annuity payable under the basic plan applies.

Subsection (b)(1) provides that an employee who has 5 or more years of service and projected service shall be entitled to an annuity when he or she reaches age 62 or 55 as the case may be.

Subsection (b)(2) provides that the annuity is computed by counting service and projected service through the end of the month in which he or she reaches the maximum age for disability benefits. Average pay is the participant's onset average pay, in the case of a participant who did not elect to make contributions under section 8418(c), and the participant's final average pay, in the case of a participant who elected to make contributions under section 8418(c).

Subsection (b)(3) provides that if an eligible participant did not elect to make contributions under section 8418(c) or has received a refund of contributions made under such an election, the amount of the annuity he or she is entitled to receive will be the lesser of (i) the monthly amount of the disability benefits received before becoming eligible to receive an annuity or (ii) the amount of the annuity computed under paragraph (1) of this subsection.

Subsection (c) provides that if the condition of the disabled participant changes so that someone who is occupationally disabled becomes totally disabled, or vice versa, the participant's disability benefits are adjusted to reflect the changed condition.

#### Section 8443. Computation of benefits

Subsection (a) provides that someone who is totally disabled receives 60 percent of his or her average pay minus the amount of any disability benefits payable under the Social Security Act at the date of disability. Thus, only the amount of the initial Social Security benefit is offset against the disability benefits. Increases in Social Security benefits as a result of cost of living adjustments or benefit enhancements are ignored for the purpose of offsetting the disability benefit.



Subsection (b) provides that someone who is occupationally disabled receives 60 percent of average pay during the first year of disability and 40 percent of that amount (as increased by any applicable cost-of-living increase) thereafter, until he or she reaches age 55.

Section 8444. Application

Subsection (a) requires a claim for disability benefits to be filed before the date the participant separates from employment by the Government or within one year after such date.

Subsection (b) provides that the appropriate administrator of benefits may waive the time limit for applying for benefits if it is determined that the participant was mentally incompetent during that period and the application for benefits is filed within one year after the participant is restored to mental competency or the date a fiduciary is appointed to manage the participant's financial affairs, whichever date is earlier.

Section 8445. Medical examinations

Subsection (a) provides that an applicant for or a recipient of disability benefits shall be examined by a physician of the benefit administrator's choice at its discretion.

Subsection (b) provides for a physician examining a participant under subsection (a) to report the diagnosis and prognosis to the appropriate administrator of benefits.

Subsection (c) provides that a participant who fails to submit to the examination required under subsection (a) shall not be entitled to disability benefits.

Section 8446. Offers of alternative employment

Subsection (a) requires that an agency consider for appointment an applicant for disability benefits who is determined to be able, on the basis of the medical examination required by section 8445, to perform the work of a position in his or her agency for which the participant is qualified, is not lower than the participant's grade or pay level, and is within the participant's commuting area.

Subsection (b) provides that the applicant is entitled to appeal to the Merit Systems Protection Board a determination of ability to perform the work required in the position described in subsection (a).

Section 8447. Recovery or restoration of earning capacity

Subsection (a)(1) provides for the administrator of benefits to terminate disability benefits to an individual who recovers from total disability before age 62 or from occupational disability before age 55. The termination date is the date of reemployment by the Government or one year after the date of the medical examination on which the determination is based, whichever date is earlier.

Subsection (a)(2) provides that payment of benefits is resumed if the disability recurs, as determined by the administrator of benefits after a medical examination, and the individual has not yet reached the maximum age for receipt of the total disability or the occupational disability benefit, as the the case may be. Payments will resume effective on the date the medical examination was completed and will be at the annual rate that would have been payable if payment of disability benefits had not been terminated.

Subsection (b)(1) provides for the administrator of benefits to terminate disability benefits to a recipient who receives income from wages or self-employment or both during a calendar year which totals an amount equal to 60 percent of the rate of pay for the individual's position on the date of disability, increased by the same percent as the overall percent increase in rates of pay under the General Schedule. The termination date is 60 days after the end of such calendar year.

Subsection (b)(2) provides that payment of benefits is resumed if the individual is not reemployed in a position subject to this chapter, continues to be disabled, is under the maximum age for receipt of disability benefits, and income from wages or self-employment during the year in which benefits were terminated is less than 60 percent of the pay for his or her position. Payments will resume effective the first day of the first year after the year in which income was less than 60 percent. The annual rate of the disability benefits upon resumption is the annual rate that would have been payable if payments had not been terminated.

Subsection (c) provides that a determination under this section may be appealed to OPM. A determination by OPM may be appealed to the Merit Systems Protection Board.

#### Section 8448. Relationship to workers' compensation

Subsection (a) provides that an individual is not entitled to receive both disability benefits under this chapter and compensation for injury to or disability of the individual under subchapter I of chapter 81 of this title covering the same period of time. This does not bar the claimant's right to the greater benefit conferred by either subchapter for any part of this period of time, nor does it deny the individual any concurrent benefit he or she is entitled to receive under this chapter and under subchapter I of chapter 81 on account of the death of another individual.

Subsection (b) provides that an individual's receipt of a lump-sum payment for compensation under section 8135 shall not affect the individual's entitlement to disability benefits under this subchapter. However, if benefits are payable under this subchapter for the same disability for which a lump-sum payment of compensation has been made, the compensation amount paid for a period extended beyond the date payment of disability benefits begins is refunded to the Employees' Compensation Fund maintained by the Department of Labor. The amount owed and the method of settlement are as determined by the Department of Labor.

Section 8449. Military reserve technicians

Subsection (a)(1) provides that a participant is entitled to disability benefits under the occupational disability definition of this chapter if the participant --

- (A) is separated from employment as a military reserve technician by reason of a disability that disqualifies the individual from membership in a reserve component of the Armed Forces or from holding the military grade required for such employment;
- (B) is not considered disabled;
- (C) is not appointed to another position in the Government; and
- (D) has not declined an offer of appointment to a position in the Government.

Subsection (a)(2) provides that payment of disability benefits under this section terminates on the date the individual is appointed to a position in the Government or declines an offer of appointment to a position in the Government, or as provided in section 8447 of this title (relating to recovery from disability).

Subsection (b) provides that any individual applying for or receiving disability benefits under this section shall be considered by any agency of the Government, as specified by OPM, before any vacant position in the agency is filled if the position is in the same commuting area and at the same grade or level and the individual is qualified for it.

#### Section 8450. Administrative provisions

Subsection (a) defines "State" as a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

Subsection (b)(1) authorizes OPM to contract with one or more insurance companies or other entities to perform some or all of the functions described in paragraph (2) of this subsection.

Subsection (b)(2) identifies the functions referred to in paragraph (1). They include determining entitlements, computing the benefits, making payments, communicating the program to agencies and employees, monitoring cases for

rehabilitation opportunities or recovery from disability, and other administrative duties.

Subsection (c) provides that a contractor under a contract awarded by subsection (b) shall establish an administrative office under a name approved by OPM.

Subsection (d) provides that contracts under this section shall not exceed five years and may be automatically renewable, in the absence of a notice by either party of intention to terminate, for successive one year terms.

Subsection (e) permits OPM to terminate a contract under this section at any time, subject to reasonable notice and opportunity for hearing (as prescribed by OPM regulations) if OPM finds that the contractor is not carrying out the contract properly.

Subsection (f) provides that each contract under this section will provide for advances of monies from the Federal Employees' Disability Insurance Fund to the contractor as needed to pay disability benefits and administrative expenses.

Subsection (g) provides for OPM to include terms and conditions appropriate to protect the interest of participants and the United States in contracts awarded under this section.

Subsection (h) provides that records established or maintained by an administrator of benefits are the property of the United States.

Subsection (i) provides that provisions of a contract under this subchapter supersede and preempt State laws or regulations related to group disability insurance to the

extent such laws or regulations are inconsistent with the contractual provisions.

Subsection (j) requires the Secretary of Health and Human Services to furnish OPM and the administrator of benefits such information relating to administration of the Social Security Act as is necessary to carry out this subchapter.

Section 8451. Annual accounting; special contingency reserve

Subsection (a) provides for a contract under this subchapter to include a provision requiring the administrator of benefits to transmit to OPM, not later than 90 days after the end of each contract year, an accounting of all monies advanced, benefit payments made, and authorized expenses charged for the contract year.

Subsection (b) provides that any funds advanced which were not used for benefit payments or administrative expenses shall be credited to contract charges in the next contract year or returned to the Federal Employees' Disability Insurance Fund upon termination of the contract, as directed by OPM.

Section 8452. Federal Employees' Disability Insurance Fund

Subsection (a) establishes this fund in the U.S. Treasury.

Subsection (b) requires each Government agency employing participants to make payments to this fund from appropriations



or funds available for salaries equal to the percentage of basic pay which OPM determines is necessary to fund benefits and administrative expenses. OPM shall require agencies to pay into the fund amounts that take into consideration the proportion of disability recipients of that agency to the rest of the government.

Subsection (c) provides that sums in this fund are available without fiscal year limitation as OPM determines necessary to pay authorized benefits and expenses.

Subsection (d) provides for the Secretary of the Treasury to invest and reinvest money in this fund in interest-bearing obligations of the United States and to sell such obligations for the purposes of such fund. The interest on and proceeds from the sale of these obligations become a part of such fund.

Subsection (e) precludes a State, any political subdivision, or other governmental authority thereof to impose or collect a tax, fee, or other monetary payment on, or with respect to, any funds transferred to contractors for payment and administration of disability benefits under this subchapter. This does not exempt any administrator of benefits from the imposition or collection of a tax, fee, or other monetary payment on the net income or profit realized by the administrator from business conducted under this subchapter, if such a levy is applicable to a broad range of business activity.

SUBCHAPTER VI - GENERAL AND ADMINISTRATIVE PROVISIONS

Section 8461. Authority of the Office of Personnel Management

Subsection (a) provides that OPM shall pay all benefits that are payable from the CSRS fund.

Subsection (b) provides that OPM shall administer all provisions of this chapter not specifically required to be administered by the Board, the Executive Director, or any other entity.

Subsection (c) permits OPM to make regulations to carry out the provisions of this chapter which they administer.

Section 8462. Cost-of-living adjustment in basic plan annuities, survivor annuities, and disability benefits

Subsection (a) specifies that, for this section, the term "base quarter" means , with respect to a year, the calendar quarter ending on September 30 and that the price index for a base quarter is the arithmetic mean of such index for the three months of such quarter.

Subsection (b)(1) provides that, effective December 1 of each year in which the price index for the base quarter of such year exceeds the price index for the base quarter of the preceding year, basic and survivor annuities paid from this plan beginning not later than December 1 are increased by the applicable percentage computed under paragraph (2), (3), (4), (5), (6) or (7) of this subsection.

Subsection (b)(2) provides that, for annuities paid to those who did not elect to contribute to the Fund under section 8418(c), or who received a refund, pursuant to section 8420, of such contributions, increases are as follows:

- no increase prior to age 62;
- from age 62 through 66, the consumer price index increase minus 2 percent;
- at age 67 and above, an amount equal to the consumer price index increase.

Subsection (b)(3) provides that, for annuities paid to those who elected to contribute to the Fund under section 8418(c) and who have not received a refund of such contributions, increases are as follows:

- before age 62, the consumer price index increase minus 2 percent;
- at age 62 and above, an amount equal to the consumer price index increase.

Subsection (b)(4) provides that annuities for the special classes referred to in sections 8411(c) and 8411(d) will be increased by the consumer price index minus 2 percent from age 55 through 66; after age 67, the increase will be equal to that of the consumer price index.

Subsection (b)(5) provides that the annuity of a disability benefit recipient under section 8442(b) will be increased after conversion to the retirement rolls at age 55 as follows:

- If he or she did not elect to contribute

to the Fund, the increase prior to age 67 is the consumer price index increase minus 2 percent; after 67 it is equal to the consumer price index increase.

- If he or she elected to contribute to the Fund and has not received a refund, the increase is equal to the consumer price index increase.

Subsection (b)(6) provides for survivor annuities in the case where the deceased did not elect to contribute to the Fund. In these situations survivor annuities are increased by an amount equal to the consumer price index increase minus 2 percent for a survivor annuitant under 67 years of age and are increased by an amount equal to the consumer price index for survivor annuitants who are at least 67 years old.

Subsection (b)(7) provides for survivor annuities in the case where the deceased elected to contribute to the Fund under section 8418(c). In these situations, the survivor annuities are increased by an amount equal to the consumer price index.

Subsection (c) provides for a pro rata share of the increase to retirees or survivor annuitants for whom this is the first increase, and for an increase to a surviving spouse or former spouse annuity equal to the total percentage by which the deceased annuitant's annuity had been increased from the date it began through the date it ended.

Subsection (d) provides that disability benefits payable under subchapter V of this chapter will be increased effective

December 1 of each year as follows:

- If he or she did not elect to contribute to the Fund, by an amount equal to the consumer price index minus 2 percent;
- If he or she elected to contribute to the Fund and has not received a refund, by an amount equal to the consumer price index increase.

Subsection (e) provides for a pro rata share of the increase for disability recipients for whom this is the first increase.

Subsection (f) provides that the monthly installment of an annuity is rounded to the next lowest dollar, but the increase is to be at least \$1.

#### 8463. Rate of benefits

This section provides that each annuity and disability benefit is stated as an annual amount, one-twelfth of which, fixed at the next lowest dollar, is the monthly rate payable on the first business day of the first month beginning after the last day of the month for which the annuity or disability benefit has accrued.

#### 8464. Commencement and termination of annuities

Subsection (a) provides that, unless otherwise specified, a participant's annuity begins the first day of the first month after separation from employment if entitled to an immediate annuity or, if entitled to a deferred annuity, the

date elected by the participant or the date he or she becomes 62, whichever is earlier. The annuity terminates at death or other terminating event provided by law.

Subsection (b) provides that, unless otherwise specified, a survivor annuity begins on the first day of the first month after the date of the participant's or former participant's death on which the annuity is based. It ends on the last day of the last month ending before the surviving spouse or former spouse dies or, if under the age of 55, remarries.

#### Section 8465. Waiver, allotment and assignment of benefits

Subsection (a) provides that an individual entitled to benefits from the basic plan may decline to accept all or part of these benefits by filing a waiver with OPM. The waiver may be revoked in writing at any time. Payment of the benefits waived may not be made for the period the waiver was in effect.

Subsection (b) permits an individual entitled to receive basic plan benefits to make allotments or assignments from such benefits for such purposes as OPM considers appropriate.

#### Section 8466. Application for benefits

Subsection (a) provides that no benefits may be paid unless an application for payment is received by OPM before the 115th anniversary of the former participant's birth.

Subsection (b) provides that benefits based on the death of a participant or former participant will not be paid unless

an application is received by OPM within 30 years after the death or other event which establishes the entitlement to the benefit.

#### Section 8467. Court orders

Subsection (a) provides that payments which would otherwise be made to a participant or former participant shall be paid in whole or in part to another person if and to the extent a court order or court-approved property settlement incident to a divorce, annulment, or legal separation expressly provide. This applies to both the basic plan and the thrift plan. Any payment under this paragraph to a person bars recovery by any other person for the same payment.

Subsection (b) provides that subsection (a) applies only to payments made by OPM or the Executive Director after the date they receive written notice of such decree, order, or agreement and such additional information and documentation as they may require.

#### Section 8468. Annuities and pay on reemployment

Subsection (a)(1) provides that when an annuitant becomes employed in an appointive or elective position in the Government, his or her annuity terminates effective on the date of employment. Service after employment is covered by this chapter. When the employment terminates,

the annuitant's rights under Subchapter II are redetermined. If the annuitant dies while employed, a survivor annuity shall be redetermined as if employment had otherwise terminated on the date of death.

Subsection (a)(2) provides that the annuity resulting from a redetermination of rights will not be less than the amount of the terminated annuity plus cost-of-living increases occurring during the period it was terminated.

Subsection (b) provides for OPM to prescribe regulations permitting an annuitant employed on a part-time basis to elect to have his or her annuity continued. The combined annuity and salary payment may not exceed the annual rate of pay for full-time employment in the position in which the annuitant is employed. The annual rate of pay is used here instead of the hourly rate of pay, permitting higher hourly rates for part-time reemployed annuitants.

#### Section 8469. Information

Subsection (a) provides that OPM shall make available to each individual who is required or eligible to be a participant such information as may be necessary to enable the individual to understand the rights and benefits, including options, which the individual has under the provisions of this chapter. The Committee expects OPM to allocate substantial resources to this task. The design of this retirement plan incorporates the principle of employee choice. Without adequate information, employees are unable to make informed choices. The Committee strongly urges OPM to



design an informational program which can be easily transmitted by agencies to employees or prospective employees with regard to employee benefits, choices and the likely consequences of such choices.

Subsection (b) provides that the information in subsection (a) shall include a summary of the Thrift Savings Plan similar to information required by ERISA. It must also include a statement that investment of a participant's funds in the Fixed Income Fund and the Common Stock Index Fund is made at the participant's risk and that the Federal government does not protect against loss on the investment or guarantee a return on the investment.

## SUBCHAPTER VII - TRANSITION PROVISIONS

This subchapter outlines the treatment that will apply to employees covered by the Civil Service Retirement System (CSRS) who elect to participate in this plan, to employees covered by this plan who have prior service under the CSRS, to employees in the interim program, and to reemployed annuitants from another Government retirement system.

Section 8471. Treatment of certain individuals subject to the Civil Service Retirement and Disability System

Subsection (a)(1) permits employees in the CSRS, whether or not their service is covered employment under Social Security, other than District of Columbia government employees, to elect to transfer to the Federal Retirement System (FRS). It also provides that a Member of Congress who is not required to participate in the FRS may elect to transfer to it. Such an election must be in writing, as prescribed by OPM regulation, and not later than December 31, 1987. In the case of an individual who becomes an employee or Member after a break in service for a period that includes January 1, 1987, the election must be not later than one year after the date the individual resumes service.

Subsection (a)(2) provides that an individual who elects to transfer to the FRS retains credit for entitlement to benefits under the CSRS for service performed subject to

CSRS, except for disability benefits and for service in the interim program.

Subsection (a)(3) provides that an individual electing to transfer to the FRS who becomes an employee or Member after a break in service for a period including January 1, 1987, retains any rights to make deposits for service under the CSRS prior to such date.

Subsection (b) provides that an individual with prior service under the CSRS who has not received a refund of his or her CSRS contributions and who is required to participate in the FRS retains credit for entitlement to benefits under the CSRS, subject to section 8472(d), which excludes entitlement to CSRS disability benefits for such an individual.

Subsection (c) provides that an individual who has received a refund of his or her CSRS contributions and who is required to participate in the FRS may make a deposit to the retirement fund to have his or her service under CSRS recredited, except for service in the interim program. Such an individual retains CSRS credit in the same way as an individual subject to subsection (b).

Subsection (d) provides that survivor benefits are payable based on conditions of eligibility and service under both the CSRS and the FRS.

Section 8472. Special rules for participants retaining entitlement in the Civil Service Retirement and Disability System

Subsection (a) provides that CSRS participants who elect to transfer to the FRS or who are covered by the FRS but

retain credit for prior service under CSRS will have their CSRS service credited under the FRS only for determining eligibility to retire under the FRS, receiving disability benefits under the FRS, vesting in the thrift plan, and determining the applicable accrual rate under section 8413(a)(1).

Subsection (b) provides that individuals described in subsection (a) may have service under the FRS credited under CSRS only for determining eligibility to retire entitled to an annuity under provisions covering mandatory separation, immediate retirement, or deferred retirement.

Subsection (c) provides that rates of pay in effect for an individual referred to in subsection (a) after he or she transfers to the FRS are included in computing average pay for benefits under the CSRS and that rates of pay in effect before such date are included in computing average pay for the FRS.

Subsection (d) provides that disability benefits from CSRS do not apply to a participant who transfers to the FRS or who retains entitlement to benefits from the CSRS.

Section 8473. Participants subject to the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983

Subsection (a) provides that the service of a participant, other than a Member of Congress or an individual described in section 8471(a)(1)(A)(ii), who made a reduced contribution to the CSRS based on this act, will have such service credited

for all purposes under the FRS.

Subsection (b)(1) provides that on January 1, 1987, the amount computed under paragraph (2) of this subsection will be transferred to an account in the Thrift Savings Fund established for participants to whom subsection (a) applies.

Subsection (b)(2) provides that the amount transferred to the Thrift Savings Fund will be twice the amount of money the individual contributed to CSRS plus interest at the rate determined under section 8334(e) credited monthly and compounded annually.

Subsection (b)(3) provides that, for vesting purposes in the thrift plan, half of the amount will be treated as a contribution from the participant and half as a contribution by the employing agency.

Subsection (b)(4) provides that all amounts transferred will be invested in the Government Securities Investment Fund established under section 8427.

Subsection (c) provides that participants hired during the period covered by this act who made a deposit to cover military service will receive a refund of the deposit.

Section 8474. Reemployed annuitants under a Government retirement system

Subsection (a) defines terms used in this section --

Paragraph (1) defines "annuitant" as having the

same meaning as it does under section 8331(9) of title 5 (for CSRS annuitants), section 4044(1) of title 22 (for Foreign Service annuitants, excluding survivors), and section 203 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

Paragraph (2) defines "Government retirement system" as the Civil Service Retirement and Disability System, the Foreign Service Retirement and Disability System, and the Central Intelligence Agency Retirement and Disability System.

Paragraph (3) defines "reemployed annuitant" as an annuitant who becomes employed by the Government after the effective date of the Federal Retirement Reform Act of 1985 and is required by section 8402 of this title to be a participant. Individuals who are not covered by the Social Security Amendments of 1983 (i.e., those whose annuities continue after reemployment as described in section 8344 of title 5) are not included under this definition; those whose annuities cease upon reemployment (i.e., those excepted from section 8344(a) of title 5) are included under this definition.

Subsection (b) provides that a reemployed annuitant retains entitlement in the Government retirement system under which he or she is receiving an annuity.

Subsection (c) provides that service creditable under the reemployed annuitant's Government retirement system is

credited under this chapter only for determining eligibility to retire under the FRS. Service performed as a reemployed annuitant is not creditable for the individual's previous retirement system.

Subsection (d) provides that pay earned as an employee before and after reemployment is considered in computing average pay under both the FRS and the annuitant's Government retirement system.

Section 8475. Exemption from certain offset provisions of the Social Security Act

This section provides that individuals covered by the CSRS who elect to transfer to the FRS, or those covered by the FRS who retain entitlement to CSRS benefits, are excluded from the windfall benefits reduction and the public pension spouse offset after they have completed five years of service under the FRS.

Section 8476. Regulations

This section permits OPM to prescribe regulations to carry out this subchapter.

Section by Section Analysis

SUBCHAPTER VIII - FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

This subchapter sets forth the management, policy, and operation of the Federal Retirement Thrift Investment Management System. It establishes the Federal Retirement Thrift Investment Board, the Executive Director function, the Federal Retirement Thrift Advisory Committee and the Employee Advisory Committee, and defines the role of each in the management of the Thrift Savings Fund.

Although thrift plans are a common feature of private-sector pension plans, they have been used only in a few Federal organizations, the Tennessee Valley Authority, Federal Reserve Board, the Federal Deposit Insurance Corporation and Comptroller of the Currency. None of these Federal thrift plans is comparable to the size, scope and complexity of the Thrift Savings Plan for the Federal workforce covered under S. 1527. The Committee designed the system to parallel private sector practice where possible but took into account the special political and economic considerations presented by a large scale thrift plan for the Federal retirement system. To the extent possible, the Federal Retirement Thrift Investment Management System meets the requirements of the Employee Retirement Income



Security Act of 1974 (ERISA). The Committee built as many protections as possible into the thrift plan.

Section 8491. Federal Retirement Thrift Investment Board

Subsection (a) establishes the Federal Retirement Thrift Investment Board in the executive branch of the Government.

Subsection (b) provides for the five members of the Board to be the Chairman of the Federal Reserve Board, the Secretary of the Treasury, the Director of OPM and two representatives of Federal employee organizations appointed by the President, one of whom must be from a labor organization and one from a Federal managers' organization. The Chairman of the Federal Reserve will serve as the Chairman of the Thrift Investment Board. To enable the Board to continue to function in the event of a vacancy in one or more of the ex-officio positions, the Committee provided for the person acting in such position to serve as a member of the Board during this time. This subsection also provides for the members of the Board appointed by the President to serve until replaced by the President which would provide continuity during the transition period following a change in Presidents.

Subsection (c) defines the required responsibilities of the Board to establish policies for investment and management of the Thrift Savings Fund and for administering the thrift plan benefits and survivor annuities payable from the Thrift Fund. The Board must also review the investment performance of the Thrift Fund, set

the rate of pay for the Executive Director without regard to civil service and classification laws, supervise the Executive Director and review and approve the budget for the Board.

Subsection (d) provides for the Board to delegate responsibilities to the Executive Director to carry out Board policies with regard to the provisions in subchapter III and this subchapter and those of subchapter IV relating to survivor annuities payable from the Thrift Savings Fund. This subsection also provides for the Board to remove the Executive Director for good cause with concurring votes of four members after investigation by the Comptroller General of the United States.

The Committee intends for the Board to provide broad oversight to the Thrift Savings Fund but not to be involved either directly or indirectly in specific investment decisions. Accordingly, subsection (d)(2) provides that the Board is prohibited from directing the Executive Director or any contractor under a contract for the Thrift Fund to invest in any particular asset or dispose of any asset in the Fund. The Board is not permitted to direct the Executive Director to enter into or terminate a contract relating to investments.

Subsection (e) requires the Board members to act solely in the interest of those participating and receiving benefits from the Thrift Fund.

Section 8492. Federal Retirement Thrift Advisory Committee

Subsection (a)(1) provides for the Board to establish a Federal Retirement Thrift Advisory Committee. Subsection (a)(2) provides for the Committee to be composed of six members appointed by the Board. Three of the members are to be from among investment asset managers outside the Government and three among administrators of thrift savings plans for employees in private sector enterprises. Subsection (a)(3) provides that the Board shall set the terms and conditions of service of Advisory Committee members.

Subsection (b) defines the responsibilities of the Advisory Committee. Although the Board is not permitted to be directly involved in specific investment decisions, this Advisory Committee will provide expert advice to the Board and Executive Director on the broad overall investment policy and decision making responsibilities relating to selection of investment funds and investment managers. It will also advise on the administration of the Thrift Savings Fund and performance of the duties of the Board and Executive Director.

Section 8493. Employee Advisory Committee

This section establishes and defines the responsibilities of the Employee Advisory Committee, which is an elected body representing the participants in the Thrift Savings Plan. The Committee intended that through this Advisory Committee the views of the Thrift Plan participants are represented. One of the

primary functions of the Employee Advisory Committee will be to exercise all rights as shareholders with respect to the Common Stock Index Investment Fund. The Board, with Federal Government officials, could not perform this function. Because of the potential number of participants, it would be administratively impossible for individuals to exercise shareholder rights. Therefore, the Committee established the Employee Advisory Committee.

Subsection (a) provides for the Board to establish an Employee Advisory Committee, composed of five elected members each of whom is a participant and has an account balance in the Thrift Savings Fund.

Subsection (b) defines the requirements for the election of the members who must be elected by majority vote of the voting participants who vote. A voting participant is defined as a participant who has an account balance in the Thrift Savings Fund. Nominations for the elections of members of the Employee Advisory Committee are to be solicited from voting participants. Each voting participant has one vote for each vacancy and a voting participant may cast only one vote for an individual nominee. The Executive Director will prescribe regulations for run-off elections. Each member of the Employee Advisory Committee shall serve for a two-year term except that three of the first five members shall serve for a term of three years to provide some continuity in the beginning of the operation of the Thrift Plan.

Subsection (c) requires a majority vote for action by the Employee Advisory Committee.

Subsection (d) defines the functions of the Employee Advisory Committee, which are to advise the Board and Executive Director on investment policies for the Thrift Savings Fund and selection of types of investment funds. The Employee Advisory Committee will also advise the Executive Director about stocks to be excluded from the Common Stock Index Investment Fund in accordance with section 8427(b)(2)(C), exercise all rights as shareholders for stocks in the Common Stock Index Investment Fund, and perform other duties as the Board may direct.

#### Section 8494. Executive Director

This section defines the functions and responsibilities of the Executive Director, who the Committee intends to be the primary manager of the Thrift Plan. Unlike the Board, the Executive Director will have direct responsibility for investment decisions.

Subsection (a) provides for the Board to appoint an Executive Director with majority agreement by the members of the Board. The Board will set the terms and conditions of service for the Executive Director, who must have substantial experience and expertise in the management of financial investments.

Subsection (b) provides for the required responsibilities of the Executive Director. They are to carry out Board-established policies, invest and manage the Thrift Savings Fund in accordance with policies established by the Board, administer the Thrift Plan and the payment of survivor annuities out of the Thrift Savings Fund, and provide for payment of annuities and other authorized distributions from the Thrift Fund. For making payments or distributions out of the Thrift Savings Fund, the Committee intends for the Executive Director to have the flexibility to select the vehicle for doing this. Since the Office of Personnel Management (OPM) administers payments of other annuities, it may be feasible for OPM to administer the payments for the Thrift Savings Fund also. However, the Committee intends for the Executive Director to have the option of selecting OPM or some other source.

Subsection (c) defines the discretionary functions of the Executive Director.

Subsection (c)(1) provides that the Executive Director may prescribe regulations to carry out his/her responsibilities as defined in this section other than regulations relating to fiduciary responsibilities.

Subsection (c)(2) provides that the Executive Director may, without regard to civil service and classification laws, hire and set pay of personnel to carry out the provisions of this subchapter, of subchapter III and of Subchapter IV which relate

to survivor annuities payable from the Thrift Savings Fund. However, these employees, as part of an Executive Branch agency, would be covered under the Civil Service Retirement System or the Federal Retirement System.

Subsection (c) (3) provides for the Executive Director to contract for services, including administrative services, to carry out the provisions of this subchapter, investments of the Thrift Savings Fund, and policies of the Board.

Subsection (c) (4) provides for the Executive Director to obtain from Federal entities, information, data and advice, as necessary, to carry out the provisions of this subchapter and subchapter III, provisions of subchapter IV which relate to survivor annuities payable out of the Thrift Savings Fund, and policies of the Board.

Subsection (c) (5) provides for the Executive Director to make payments from the Thrift Savings Fund necessary to carry out provisions of this subchapter and subchapter III, provisions of Subchapter IV relating to survivor annuities payable out of the Thrift Savings Fund and policies of the Board.

Subsection (c) (6) provides for the Executive Director to pay compensation, per diem, and travel expenses of personnel from the Thrift Savings Fund.

Subsection (c) (7) provides for the Executive Director to utilize the services of individuals employed intermittently in the government service and reimburse these individuals for travel and per diem expenses as authorized by section 5702 and 5703 of title 5.

Subsection (c) (8) provides for the Executive Director, except as prohibited by law or Board policy, to delegate his/her responsibilities to officers and employees under the Board and provide for further redelegation.

Subsection (c) (9) provides for the Executive Director to take other actions as appropriate to carry out his/her function.

#### Section 8495. Investment Policy

This section requires the Board to develop investment policies which provide for prudent investments suitable for accumulating funds for retirement income, low administrative costs, and investments likely to receive broad acceptance by participants and the public, taking into consideration the views of the Employee Advisory Committee.

#### Section 8496. Administrative Provisions

This section provides for the meeting schedule of the Board, quorum for transaction of business, and compensation for members




of the Board, the Federal Retirement Thrift Advisory Committee, and the Employee Advisory Committee.

Subsection (a) provides for the Board to meet at the call of the Chairman but at least once during each fiscal year.

Subsection (b) provides for the Board to transact business on a majority vote of a quorum of the Board and provides that a vacancy on the Board shall not affect the authority of a quorum.

Subsection (c) provides that three members of the Board constitute a quorum.

Subsection (d) provides for Board members who are not officers or employees of the Federal Government, each member of the Employee Advisory Committee who is not an employee or member, and each member of the Federal Retirement Thrift Advisory Committee to be compensated. They are to be compensated at the daily rate of basic pay at the grade GS-18 level under the General Schedule when performing the above functions. Board members, the Federal Retirement Thrift Advisory Committee, and the Employee Advisory Committee are to be paid travel and per diem expenses, as necessary.



Subsection (e) provides that an employee who is a member of the Board or the Employee Advisory Committee will not be charged annual leave for time in performing service for the Board.

Subsection (f) provides for the Federal Retirement Thrift Advisory Committee and Employee Advisory Committee to be exempt from section 14(a)(2) of the Federal Advisory Committee Act, which requires advisory committees to terminate after two years.

Section 8497. Fiduciary responsibilities; liability and penalty

This section identifies fiduciaries and their responsibilities, defines "party in interest," states basic standards of fiduciary conduct, lists prohibited practices by fiduciaries and describes penalties for violations.

Subsection (a)(1) defines the term "fiduciary" to include each member of the Federal Retirement Thrift Advisory Committee and the Executive Director, any person with discretionary authority over the management of assets of the Thrift Savings Fund, each member of the Employee Advisory Committee with respect to the member's duties related to the Common Stock Index Investment Fund except when defining a stock index as provided in section 8427, and any person with respect to the Thrift Savings Fund described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974. Board members are not fiduciaries for the Thrift Savings Fund.

Subsection (a)(2) defines the term "party in interest" to include:

(A) any fiduciary;

(B) any counsel to a fiduciary, acting as such;

(C) any participant;

(D) any person providing services to the Board or the Executive Director, acting as such;

(E) a labor organization, the members of which are participants;

(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subclause (A), (B), or (D);

(G) a corporation, partnership, or trust or estate of which, or in which, 50 percent or more of --

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

(ii) the capital interest or profits interest of such partnership; or

(iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by a person described in subclause (A), (B), (D), or (E) of this clause;

(H) an employee, officer, director, or any individual having powers or responsibilities similar to those of an officer and director, or a holder (directly or indirectly) of 10 percent or more of the shares of a corporation referred to in subclause (G) of this clause; and

(I) an employee, officer, director, or an individual having powers or responsibilities similar to those of an officer and director, or a person who, directly or indirectly, is at least a 10-percent partner or joint venturer in a person described in subclause (A), (B), (D), (E), or (G) of this clause;

It is intended in this subsection that "party in interest" will be interpreted the same as under the Employee Retirement Security Act of 1974.

Subsection (a) (3) defines the term "person" to mean an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or labor organization.

Subsection (a) (4) defines "adequate consideration" as follows:

(A) in the case of a security for which there is a generally recognized market --

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the Thrift Savings Fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest;

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the fiduciary or fiduciaries in accordance with regulations by the Department of Labor.

Subsection (b) (1) provides that a fiduciary will carry out his/her duties solely in the interest of the participants and beneficiaries for the purpose of providing benefits and defraying reasonable expenses of the Thrift Savings Fund. It also provides that a fiduciary will act in the manner of a prudent individual who is familiar with such matters in similar circumstances and diversify investments of the Thrift Savings Fund to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. A fiduciary should also act in accordance with the policies described by the Board.

Subsection (b) (2) provides that a fiduciary may not maintain the indicia of ownership of any assets of the Thrift Savings Fund outside the jurisdiction of the district courts of the United States.

Subsection (c) (1) provides that a fiduciary shall not permit the Thrift Savings Fund to transfer assets to a party in interest, acquire property by a party in interest, or exchange services with a party in interest, except for adequate consideration.

Subsection (c) (2) provides that a fiduciary will not deal with assets in the Thrift Savings Fund in his/her own interest or for his own account. A fiduciary will not act in any capacity in a transaction involving the Thrift Savings Fund on behalf of or representing a party whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries. A fiduciary will not receive any consideration for his/her own personal account for any party dealing with sums in the Thrift Savings Fund in connection with a transaction involving the Thrift Savings Fund.

The Committee deliberately liberalized permitted transactions with parties in interest vis-a-vis the Employee Retirement Income Security Act of 1974. This was done to avoid some of the over-reaching in the ERISA statute. However, the Committee retained the strict prohibitions against self-dealing. The Committee is cognizant of the potential pitfalls of liberalizing the general

rules but feels that effective enforcement by the Labor Department of the self-dealing prohibitions should protect against most, if not all, undesirable arrangements.

Subsection (d) clarifies that a fiduciary may receive any benefit he/she is entitled to receive as a participant, former participant or beneficiary. It also provides for a fiduciary to be reasonably compensated for services rendered or reimbursement of expenses incurred in carrying out fiduciary duties. This subsection also provides that a fiduciary may serve as an officer, employee, agent or other representative of a party in interest.

Subsection (e) (1) (A) provides that a fiduciary who breaches the responsibilities prescribed in subsection (b) or violates subsection (c) shall be liable to the Thrift Savings Fund for any resulting losses and must restore to the fund any profits made by the fiduciary through the use of assets of such fund. The fiduciary shall be subject to other relief as a court considers appropriate, including removal of a fiduciary.

Subsection (e) (1) (B) provides that the Secretary of Labor may assess a civil penalty against a party in interest engaging in a prohibited transaction. The amount of the penalty shall be equal to 5 percent of the amount involved in each transaction for each year the transaction continues as defined in section 4975(f) (4) of the Internal Revenue Code, except in a case where the transaction is not corrected within 90 days after notice to the

party in interest in violation, in which case the penalty may not amount to more than 100 percent of the amount involved.

Subsection (e)(1)(C) provides that a fiduciary shall not be liable for a breach of fiduciary responsibility committed before becoming a fiduciary or after ceasing to be a fiduciary.

Subsection (e)(1)(D) provides that a fiduciary shall be liable for a breach of fiduciary responsibility of another fiduciary in addition to his/her own liability under subparagraph (A) if the fiduciary knowingly participates in or attempts to conceal an act or omission of another fiduciary, knowing such an action or omission is a breach; by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary responsibilities, if the fiduciary has enabled another fiduciary to commit such a breach; or the fiduciary has knowledge of a breach by another fiduciary and does not make efforts to remedy the breach.

Subsection (e)(1)(E) provides for the Secretary of Labor to prescribe by regulation the procedures for allocating fiduciary responsibilities among fiduciaries including the investment managers. It also provides that any fiduciary who, based on such procedures, allocates to a person any fiduciary responsibility shall not be liable for an act or omission of such person unless such fiduciary violated subsection (b) with respect to the allocation or implementation of the Board procedures or such



fiduciary would otherwise be liable in accordance with subparagraph (D).

Subsection (e)(2)(A) provides that the Secretary of Labor may bring a civil action in the district courts of the United States to determine and enforce a liability under paragraph (1)(A) of this subsection, to collect any civil penalty under paragraph (1)(B) of this subsection or to enjoin any act or practice which violates section 8491(d)(2) or (e).

Subsection (e)(2)(B) provides that the Secretary of Labor, a participant, annuitant, former participant entitled to a deferred annuity, other beneficiary or fiduciary may bring a civil action in the district courts of the United States to enjoin any act or practice which violates any provision of subsection (b) or (c) or obtain any other appropriate relief to redress a violation of any such provision.

Subsection (e)(2)(C) provides that any participant, annuitant, former participant entitled to a deferred annuity or other beneficiary may bring suit in the district court of the United States to recover benefits due, enforce his/her rights, or clarify his/her rights to future benefits.

Subsection (e)(3) provides that an action brought about under paragraph (2) concerning a fiduciary's breach of responsibility under subsection (b) or violation of subsection (c) may not begin after the earlier of six years after the date of the last breach

or violation or, in the case of omission, the latest date on which the fiduciary could have cured the breach or violation or three years after the earliest date the plaintiff knew of the breach or violation, except in cases of fraud or concealment in which case the time period is six years after discovery.

Subsection (e) (4) (A) provides that district courts of the United States shall have exclusive jurisdiction of civil actions except those under paragraph (2) (C) which shall be under the concurrent jurisdiction of State and district courts of the United States.

Subsection (e) (4) (B) provides that an action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States where the alleged breach occurred or in the district of a defendant.

Subsection (e) (5) provides that a copy of the complaint or petition filed other than by the Secretary of Labor shall be served by certified mail on the Director, Executive Director, Secretary of Labor and the Secretary of the Treasury. Any of these officers may intervene in any action. If the action is brought by the Secretary of Labor, he shall notify these officers.

Subsection (f) provides that the Secretary of Labor may prescribe regulations to carry out this section including exemptions.

Subsection (g) provides that the Secretary of Labor in consultation with the Comptroller General shall establish a regular program to audit compliance with fiduciary requirements.

Section 8498. Bonding

This section provides for bonding of officials and financial institutions of the Thrift Savings Fund and specifies the officials and conditions under which they must be bonded.

Subsection (a)(1) provides that each fiduciary and person who handles funds or property of the Thrift Savings Fund shall be bonded with the exception referred to in (2).

Subsection (a)(2)(A) provides that a fiduciary shall be exempt from the bonding requirement if the fiduciary is a corporation operating under the laws of the United States or any State, is authorized under these laws to exercise trust powers or conduct insurance business, is subject to Federal or State authority, supervision and examination and has at all times a combined capital and surplus in excess of a minimum of not less than \$1 million as set by the Secretary of Labor.

Subsection (a) (2) (B) provides that banks or other financial institutions which meet bonding requirements under State law which are equivalent to Federal requirements, as determined by the Secretary at Labor, may be exempt from the bonding requirements under this section under several conditions. These are banks or other financial institutions which are exempt from bonding requirements based on application of subparagraph (A), authorized to exercise trust powers, and not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

Subsection (b) provides for the Secretary of Labor to set the amount of a bond at the beginning of each fiscal year. The amount of the bond shall be no less than 10 percent of the amount of funds handled or an amount no less than \$1,000. The maximum amount shall be \$500,000 except when set at a greater amount by the Secretary of Labor after due notice. It also provides that the amount of funds handled during the preceding fiscal year or the estimated amount during the current fiscal year will determine the amount of the bond as provided in regulations prescribed by the Secretary of Labor.

Subsection (c) provides that a bond shall include the terms and conditions the Secretary considers necessary to protect the Thrift Savings Fund against loss. It also provides that a bond have as surety a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary

of the Treasury and shall be in a form or of a type approved by the Secretary of Labor.

Subsection (d) provides that it shall be unlawful for any person covered by subsection (a) to receive, handle, disburse or exercise custody or control of funds of the Thrift Savings Fund without being bonded. It also provides that it shall be unlawful for any fiduciary or other person with authority to direct the performance of functions in paragraph (1) to permit the performance of such functions by any person who does not meet the bonding requirements as provided in subsection (a).

Subsection (e) provides that a person required to be bonded under subsection (a) shall be exempt from any other provision of law which would require bonding for handling funds or property of the Thrift Savings Fund.

Subsection (f) provides for the Secretary of Labor to prescribe regulations to carry out the provisions of this section and to exempt a person or class of persons from the requirements of this section.

Section 8499 Exculpatory provisions; insurance

Subsection (a) provides that any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability under this subchapter shall be void. Subsection (b) provides for the Executive Director to require

agencies to contribute not more than one percent of the amount contributed to the Thrift Savings Fund under section 8421(b) to purchase insurance to cover potential liability of persons serving in a fiduciary capacity with respect to the Thrift Savings Fund.

Section 101(b) amends the table of chapters at the beginning of part III of title 5 to insert after chapter 83 the following:

"84. Federal Retirement System ..... 8401."